

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	File No. EB-03-TS-144
	)	
Blackstone~NEY	)	NAL/Acct. No. 200432100013
Ultrasonics, Inc.	)	FRN # 0011217999

**ORDER**

**Adopted: August 5, 2004**

**Released: August 10, 2004**

By the Chief, Enforcement Bureau:

1. In this *Order*, we adopt the attached Consent Decree entered into between the Enforcement Bureau and Blackstone~NEY Ultrasonics, Inc. ("Blackstone~NEY"). The Consent Decree terminates an investigation into Blackstone~NEY's compliance with the equipment requirements set forth in Parts 2 and 18 of the Commission's Rules ("Rules") with respect to certain ultrasonic cleaning devices manufactured and marketed by Blackstone~NEY.

2. The Enforcement Bureau and Blackstone~NEY have negotiated the terms of a Consent Decree that would resolve this matter and terminate the investigation. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. Based on the record before us, we conclude that no substantial or material questions of fact exist with respect to this matter as to whether Blackstone~Ney possesses the basic qualifications, including those related to character, to hold or obtain any FCC license or authorization.

4. After reviewing the record and the terms of the Consent Decree, we believe that the public interest will be served by adopting the Consent Decree and terminating the investigation.

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Communications Act, as amended,<sup>1</sup> and Sections 0.111 and 0.311 of the Rules,<sup>2</sup> the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the Enforcement Bureau's investigation of Blackstone~NEY **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that Blackstone~NEY Ultrasonics, Inc. shall make its voluntary contribution to the United States Treasury, as specified in the Consent Decree, by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the referenced NAL/Acct. No. and FRN.

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<sup>1</sup> 47 U.S.C. § 4(i).

<sup>2</sup> 47 C.F.R. §§ 0.111, 0.311.

8. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Eugene Phaneuf, President, Blackstone~NEY Ultrasonics, Inc., 9 North Main Street, Jamestown, N.Y., 14701, and to Shirley S. Fujimoto, Esq., McDermott, Will & Emery, LLP, 600 Thirteenth Street, N.W., Washington, D.C., 20005.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

## CONSENT DECREE

The Enforcement Bureau (“Bureau”) of the Federal Communications Commission (“Commission”) and Blackstone~NEY Ultrasonics, Inc. (“Blackstone~NEY”) hereby enter into this Consent Decree resolving possible violations of Parts 2 and 18 of the Commission’s Rules concerning certain ultrasonic cleaning devices manufactured and marketed by Blackstone~NEY.

### Background

1. In June 2003, Blackstone~NEY, a manufacturer of ultrasonic cleaning devices for use in industrial environments, reported to the Bureau efforts to evaluate the compliance of its product line with the requirements of Part 18 of the Commission’s Rules. In response to this disclosure, the Bureau initiated an investigation into Blackstone~NEY’s compliance with Parts 2 and 18 of the Commission’s Rules with respect to the following models of ultrasonic cleaning devices manufactured and sold between March 1, 2002 and December 31, 2003:

25 kHz Neptune Family  
40 kHz Neptune Family  
25 kHz Neptune B Family  
40 kHz Neptune B Family  
25 kHz Dual Neptune, Y chassis  
40 kHz Dual Neptune, Y chassis  
25 kHz Neptune on a plate, G chassis  
40 kHz Neptune on a plate, G chassis  
25 kHz Neptune High Power  
40 kHz Neptune High Power  
TP-3  
TP-3D-2  
TP-6  
TP-20  
40 kHz sweepSONIK 2D Family  
72 kHz sweepSONIK 2D Family  
104 kHz sweepSONIK 2D Family  
132 kHz microSONIK  
40 kHz proSONIK 2  
multiSONIK, 3 frequency  
multiSONIK, 4 frequency  
multiSONIK 2, 6 frequency  
multiSONIK 2, 7 frequency  
HT-1206

### Definitions

2. For the purposes of this Consent Decree the following definitions shall apply:
- (a) “Commission” or “FCC” means the Federal Communications Commission;
  - (b) “Bureau” means the Enforcement Bureau of the Commission;

- (c) “Blackstone~NEY” means Blackstone~NEY Ultrasonics, Inc., its subsidiaries, affiliates and any successors or assigns;
- (d) “Parties” means Blackstone~NEY and the Bureau;
- (e) “Subject Devices” means those ultrasonic cleaning devices identified in paragraph 1 above.
- (f) “Adopting Order” means an order of the Bureau adopting the terms and conditions of this Consent Decree;
- (g) “Effective Date” means the date the Adopting Order is released by the Bureau;
- (h) “Rules” means the Commission’s Rules found in Title 47 of the Code of Federal Regulations; and
- (i) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 *et seq.*

### Terms of Settlement

3. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

4. The Parties agree that this Consent Decree shall become binding on the Parties on the Effective Date. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other final order of the Commission and any violation of the terms or conditions of this Consent Decree shall constitute a violation of a Commission order.

5. Blackstone~NEY acknowledges that the Bureau has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

6. The Parties waive any rights they may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided that the Adopting Order adopts this Consent Decree without change, addition or modification.

7. Blackstone~NEY waives any rights it may have under any provision of the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters discussed in this Consent Decree.

8. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination of any compliance or noncompliance with the Act or the Rules. The Parties further agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Blackstone~NEY does not admit or deny any liability for violating the Act or the Rules in connection with the matters that are the subject of this Consent Decree.

9. In express reliance on the covenants and representations in this Consent Decree, the Bureau agrees to terminate its investigation into whether Blackstone~NEY may have violated the Act or the Rules with respect to any ultrasonic cleaning devices manufactured or distributed before the effective date of this Consent Decree.

10. Blackstone~NEY represents that every model of ultrasonic cleaning device manufactured after December 31, 2003, is in full compliance with the technical requirements set forth in the Commission's Rules and agrees that all future models will be in full compliance with the Commission's Rules.

11. Blackstone~NEY will implement a Federal Communications Commission Regulatory Compliance Plan ("RCP"). The RCP, which is attached hereto and incorporated herein, will include Blackstone~NEY's appointment of a regulatory compliance officer charged with oversight of personnel responsible for ensuring that ultrasonic cleaning devices comply with all applicable Commission Rules prior to distribution. Blackstone~NEY will maintain its RCP for twenty-four (24) months from the Effective Date of this Consent Decree.

12. Blackstone~NEY agrees to resolve all complaints of harmful interference, as defined in Part 18 of the Commission's Rules, from the Subject Devices. To the extent that Blackstone receives any complaints or reports of harmful interference from the Subject Devices, Blackstone will submit reports to the Bureau on a quarterly basis, beginning three (3) months from the Effective Date of this Consent Decree and continuing for twenty-four (24) months from the Effective Date of this Consent Decree, detailing the complaints and the steps taken to resolve the complaints.

13. The Parties acknowledge and agree that this Consent Decree shall constitute a final and binding settlement between Blackstone~NEY and the Bureau regarding possible violations of the Act and the Rules with respect to any ultrasonic cleaning devices manufactured or sold by Blackstone~NEY prior to the Effective Date of this Consent Decree. In consideration for termination by the Bureau of its investigation into whether Blackstone~NEY may have violated the Act or the Rules with respect to any ultrasonic cleaning devices manufactured or sold by Blackstone~NEY prior to the Effective Date of this Consent Decree and in accordance with the terms of this Consent Decree, Blackstone~NEY agrees to the terms set forth herein.

14. The Bureau agrees that it will not entertain, or institute on its own motion, any new proceeding, formal or informal, take any action on its own motion, or recommend to the full Commission any forfeiture or other sanction, against Blackstone~NEY for any alleged violation of the Act or the Rules with respect to any ultrasonic cleaning device manufactured or sold by Blackstone~NEY prior to the Effective Date of this Consent Decree. Nothing in this Consent Decree shall prevent the Bureau from instituting new investigations or enforcement proceedings against Blackstone~NEY in the event of any alleged future misconduct for violation of this Consent Decree or for violation of the Act and the Rules consistent with the provisions of this Consent Decree.

15. The Parties agree that each is required to comply with each individual condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. To the extent that Blackstone~NEY fails to satisfy any condition, in the absence of Commission alteration of the condition, it will be deemed noncompliant and may be subject to possible future enforcement action with respect to such failure to satisfy the condition.

16. The Parties agree that any provision of this Consent Decree which conflicts with any subsequent rule, order of general applicability or other decision of general applicability adopted by the Commission will be superseded by such Commission rule, order or other decision.

17. Blackstone~NEY agrees to make a voluntary contribution to the United States Treasury in the amount of seventy-five thousand dollars (\$75,000) within thirty (30) days of the Effective Date. Such contribution shall be made, without further protest or recourse, by credit card through the Commission's Debt and Credit Management Center at (202) 418-1995, or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, Forfeiture Collection Section, Finance Branch, P.O. Box 73482, Chicago,

Illinois, 60673-7482. The payment should reference NAL/Acct. No. 200432100013 and FRN 0011217999.

18. If any Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Blackstone~NEY nor the Commission shall contest the continuing validity of the Consent Decree or Adopting Order. The Parties agree to comply with, defend and support the validity of this Consent Decree and the Adopting Order in any proceeding seeking to nullify, void, or otherwise modify the Consent Decree or the Adopting Order.

19. The Parties agree that in the event that any court of competent jurisdiction renders this Consent Decree invalid, this Consent Decree shall become null and void and may not be used in any manner in any legal proceeding.

20. This Consent Decree cannot be modified without the advance written consent of all of the Parties.

21. This Consent Decree may be signed in counterparts.

For the Enforcement Bureau:

By: \_\_\_\_\_  
David H. Solomon  
Chief, Enforcement Bureau

For Blackstone~NEY Ultrasonics, Inc.:

By: \_\_\_\_\_  
Eugene Phaneuf  
President  
Blackstone~NEY Ultrasonics, Inc.

**COMPLIANCE PLAN****I. PERSONNEL AND TRAINING****1. Compliance Officer**

Blackstone~NEY will appoint a Regulatory Compliance Officer (“Compliance Officer”), who will administer the compliance program described below. The Compliance Officer will also supervise Blackstone~NEY’s compliance with Parts 2 and 18 and Section 1.17 of the FCC’s Rules and the requirements of the Consent Decree.

**2. Written Advisory**

Within 45 days of the Effective Date of the Consent Decree, the Compliance Officer will send a written advisory on Parts 2 and 18 of the FCC’s Rules, Section 1.17 of the FCC’s Rules, and the requirements of the Consent Decree to each officer and employee of Blackstone~NEY, who have or will have responsibilities related to the design, development, testing, marketing, and distribution of ultrasonic devices on behalf of Blackstone~NEY.

**3. Training**

Blackstone~NEY will train and provide materials concerning Parts 1, 2 and 18 of the FCC’s Rules and the requirements of the Consent Decree to all of its employees who are involved directly or indirectly in the design, development, testing, marketing, and distribution of ultrasonic devices. Specifically, Blackstone~NEY will, within 60 days of the Effective Date of the Consent Decree:

- (a) train its employees regarding compliance with the technical requirements of Part 18 of the FCC’s Rules in the design and manufacture of ultrasonic devices;
- (b) train its employees regarding compliance with Part 2 of the FCC’s Rules regarding the sale, marketing, and distribution of ultrasonic devices;
- (c) train its employees regarding compliance with the obligation pursuant to Sections 1.17 and 1.65 of the FCC’s Rules to ensure and maintain the accuracy and completeness of any materials or information provided to the FCC; and
- (d) train its employees regarding the requirements of the Consent Decree.

**4. Disciplinary Action**

If, after an internal investigation and based upon a preponderance of the evidence, Blackstone~NEY concludes that one of its employees has intentionally made any misrepresentation, or engaged in any lack of candor in any submission to the FCC, either orally or in writing, Blackstone~NEY will take appropriate disciplinary action.

## II. RESOLUTION OF COMPLAINTS

### 1. Responsibilities

The Compliance Officer will be responsible for (1) receiving and reviewing any complaints of harmful interference, (2) initiating and maintaining an ongoing log of the status and actions taken regarding each complaint, (3) supervising those employees assigned to resolve each complaint, and (4) coordinating the preparation and submission to the FCC of reports regarding any complaints of harmful interference received by Blackstone~NEY.

### 2. Process

Blackstone~NEY will use its best efforts to resolve any complaints of harmful interference it receives with respect to the ultrasonic devices identified in the Consent Decree. Upon receipt of a complaint, Blackstone~NEY will:

- (a) Investigate the circumstances related to the complaint in order to determine: (1) whether the Blackstone~NEY device complained of is in fact the source of the harmful interference, and (2) if so, what steps must be taken in order to resolve the harmful interference.
- (b) Inform the complainant if Blackstone~NEY should conclude that its device is not the source of the alleged harmful interference and provide the complainant with the relevant facts and information used by Blackstone~NEY in reaching this conclusion.
- (c) To the extent that Blackstone~NEY's device is the source of the complained-of harmful interference, work with the operator to implement solutions to mitigate the harmful interference.

The disposition of each complaint shall be tracked and monitored by the Compliance Officer. The Compliance Officer will ensure that current and accurate information regarding each complaint is provided to the FCC in connection with any report or other required filing.

### 3. Definitions

"Harmful interference" shall be interpreted in accordance with the definition of that term contained in Section 18.107(b) of the FCC's Rules.